THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26023 of 2006

Dated:30.04.2007

Between:

Kavali Pochamma.

…Petitioners

and

The Regional Joint Commissioner and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26023 of 2006

ORDER:

The petitioner herein alleges that her husband Kavali Mallaiah was the tenant of the land admeasuring Acs.3.09 guntas in Survey No.148 situated at Kompalli Village of Qutubullapur Mandal in Ranga Reddy District. The land is owned by Balaji Venkateswara Swamy Temple, Alwal. After his death, the petitioner succeeded to the tenancy and cultivating the land for more then fifty years. The petitioner alleges that the respondents issued a publication in the newspaper inviting objections for the sale of the said land. The petitioner then filed an application under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Endowments Act'), raising objections. The said application was rejected by the second respondent on 08.04.2003. The petitioner assailed the same in W.P.No.8575 of 2003. By an order dated 31.07.2003, this Court disposed of the Writ Petition giving liberty to the petitioner to file an application seeking declaration that she is a landless poor person. Accordingly, the petitioner made an application before the second respondent under Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003. By proceedings dated 27.10.2005, the second respondent rejected her claim as a landless poor person. The petitioner then preferred an appeal before the first respondent who by impugned order dated 01.08.2006 dismissed the same. This Writ Petition is filed

against the said order.

Learned Counsel for the petitioner submits that the tenancy of the petitioner's husband was governed by the provisions of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Tenancy Act'), and Section 82 of the Endowments Act has no application. Secondly, it is the submission of the learned Counsel for the petitioner that respondents 1 and 2 erroneously came to the conclusion that the petitioner is not a landless poor person without conducting proper enquiry. **Opposing** the Writ Petition, the learned Assistant Government Pleader for Endowments submits that after coming into force of Section 82(1) of the Endowments Act, notwithstanding anything contained in any other law, lease of agricultural land by the religious institution stands cancelled, and therefore, the petitioner cannot rely on the Tenancy Act. Secondly, she submits that though the land involved in the case is Acs.3.09 guntas of dry land, as the income of the petitioner is more than twelve thousand rupees per annum and she owns 200 square yards of land, she was not declared as landless poor person. A perusal of the order of the second respondent would show that the petitioner herein deposed before the second respondent stating that she is having a house bearing No.3-70 in Kompalli Village admeasuring 200 square yards, which was acquired by parents of her husband. The petitioner also examined four witnesses in proof of her contention. After considering this evidence, the second respondent came to the conclusion that though the land is classified as agricultural land in revenue records, the location and condition of the land is altogether different and that there are many real estate ventures around the Temple land with internal B.T.Roads, and that there is no cultivation at all in surrounding lands and residential flats have come up. Therefore, a finding was recorded that there is no possibility of using the land for agriculture. In the appeal, the appellate authority – first respondent herein; found that there is no subsisting lease in her favour and that she is not a landless and poor person as her income is more than twelve thousand rupees per annum.

It is needless to point out that a person having tenancy in respect of the land admeasuring two and half acres of wet land or five acres of dry land and whose income is not more than twelve thousand rupees per annum is alone treated as a landless poor person for the purpose of Section 82 of the Endowments Act. Only in such case, the person would get the benefit of being continued as a tenant or exercising first option for purchase of the property. In this case, admittedly, the petitioner's husband was the tenant and any rights under the Tenancy Act get extinguished after coming into force of Section 82(1) of the

Endowments Act. Indeed, as held by the Supreme Court in **State of A.P. v. Nallamilli Ramireddi**[1] the rights under Tenancy Act cannot defeat Section 82 of the Endowments Act. Further, as found by the appellate authority the petitioner was not having subsisting lease. Be it noted, so as to be a tenant for the purpose of Section 82 of the Endowments Act the first thing a person has to show that for six years prior to coming into force of Section 82(1) of the Endowments Act with effect from 26.08.2002, such person was the lessee. This was not pleaded or proved before the authorities. Further, these are disputed questions of fact and cannot be gone into in the Writ Petition.

The Writ Petition is, therefore, dismissed. No costs.

_____

(V.V.S.RAO, J)

30.04.2007
vs

---

[1] (2001) 7 SCC 708 = AIR 2001 SC 3616